APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

ABLE HOME HEALTH, LLC, Plaintiff, v. OXYGEN QUALIFYING SERVICES, INC. and JOHN DOES 1-10, Defendants.	))))))))))	3:09-CV-50128 Judge Kapala Magistrate Judge Mahoney

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), executed in April, 2010, is entered into by and between Able Home Health, LLC ("Plaintiff"), individually and on behalf of the Settlement Class (defined below), and Oxygen Qualifying Services, Inc. ("Oxygen" and defined below in paragraph 2(a)), sometimes collectively referred to herein as the "Parties," by and through their respective undersigned counsel.

RECITALS

WHEREAS, litigation between the Parties entitled Able Home Health, LLC *v. Oxygen Qualifying Services, Inc.*, 09-CV-50128 (the "Litigation"), is pending in the United States District Court for the Northern District of Illinois, Western Division (the "Court"), which the Parties wish to settle, compromise, and terminate;

WHEREAS, Plaintiff has alleged in the Litigation that Oxygen violated the Telephone Consumer Protection Act ("TCPA"), by sending out unsolicited advertisements to certain telephone facsimile machines from December 18, 2006 to January 7, 2010;

WHEREAS, for purposes of this Agreement only, the Parties stipulate to the conditional certification of a class (the "Settlement Class") comprised of:

> All persons and entities with facsimile numbers, who, on or after December 18, 2006 through and including January 7, 2010, were sent faxes by or on behalf of defendant Oxygen promoting its goods or services for sale, and who were not provided an "opt out" notice as described in 47 U.S.C. § 227;

WHEREAS, for purposes of this Agreement only, the Parties have determined that the Class consists of approximately 20,000 persons and entities;

WHEREAS, the Parties have agreed on a compromise which is in the best interests of all Parties, including the Settlement Class and all of its members;

WHEREAS, Plaintiff's Counsel ("Edelman, Combs, Latturner & Goodwin, LLC") have conducted a full investigation into the facts and law relating to the Litigation and the Settlement Class;

WHEREAS, after considering the benefits that the Settlement Class will receive under this Agreement, the fact that Oxygen has indicated that if this Agreement is not approved it will continue to vigorously oppose claims asserted in the Litigation, the attendant risks, uncertainties and delays of litigation, Plaintiff and Plaintiff's Counsel have concluded that it is fair, equitable and in the best interests of the Settlement Class to resolve the Released Claims (as defined below in Paragraph 7) upon the terms and conditions provided for in this Agreement;

WHEREAS, although Oxygen denies any fault, wrongdoing, or liability of any kind, Oxygen is entering into this Agreement after considering the additional expense and delay that would result from the continuation of the Litigation and having determined that it is appropriate to resolve the Released Claims upon the terms and conditions provided for in this

Agreement;

WHEREAS, this Agreement has been negotiated among the Parties hereto in good faith and after arms-length discussion, the Parties reached an agreement to resolve the Released Claims on the terms and conditions set forth herein;

WHEREAS, Oxygen expressly denies the foregoing allegations made against it and any other allegations raised or that could have been raised by Plaintiff in the Litigation and by entering into this Agreement does not admit the violation of any state, federal, or local common or statutory law; and

WHEREAS nothing in this Agreement shall constitute or be deemed to constitute an admission that Oxygen has committed any of the acts alleged in the Litigation or violated any state, federal, or local common law or regulation.

PROVISIONS

NOW, THEREFORE, in consideration of the aforesaid recitals, the mutual promises, representations, covenants, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Plaintiff and Oxygen agree as follows:

1. **Recitals.** The Recitals set forth above, including all definitions designated or stated therein, are incorporated by reference as integral provisions of this Agreement.

2. **Definitions.**

   a. As used herein, Oxygen Qualifying Services, Inc. ("Oxygen"), shall include its agents, employees, officers, directors, partners, shareholders, affiliates, subsidiaries, divisions, parent companies, predecessors in interest, successors in interest, legal counsel, successors and assigns, and all persons, natural or corporate.

b. As used herein, "Class" or "Class Members" shall mean the entities and/or persons, whether natural or corporate, individually or collectively who comprise the Settlement Class as defined above.

3. **Effective Date.** If there is no objection to the Court approving this Agreement, then the Agreement shall become effective upon the Court's entry of a final order: (a) approving this Agreement as fair, reasonable, and adequate to the Class; and (b) finding that this Agreement is fair and made in good faith. If there is an objection to the Court approving this Agreement, then the Agreement shall become effective five days after the date that the Court's final order, judgment, and decree becomes a final, non-appealable order, or (if anyone appeals from the final order, judgment, and decree) five (5) days after a disposition of the appeal that affirms or otherwise upholds the Court's final order, judgment, and decree, the terms and provisions of this Agreement, and orders the consummation of the Agreement in accordance with the terms and provisions of this Agreement. The date on which this Agreement becomes effective under this paragraph shall be called the "Effective Date."

4. **Relief to Plaintiff and the Class.** The following relief is provided under this Agreement:

a. Subject to Court approval, Oxygen shall pay a total sum of $270,000 (the "Settlement Fund") in full settlement of all claims made by Plaintiff, Able Home Health Care, for and on behalf of The Settlement Class, except those class members who opt out, and said settlement amount of $270,000.00 will be in full and final satisfaction of all claims that were made or could have been made by Plaintiff and the Settlement Class against Oxygen, including but not limited to all costs, expenses and attorney's fees, as well as costs and expenses of administering this Settlement. The Settlement Fund of $270,000.00 paid by Oxygen shall be paid to Plaintiff, Edelman, Combs, Latturner & Goodwin, LLC

("Plaintiff's Counsel"), and the Settlement Class Members who submit valid claim forms and who do not opt out. The Settlement Fund shall be paid by Oxygen within 10 days of the Final Approval Hearing, subject to Court approval.

b. On the Effective Date, as defined above, and subject to Court approval, the entire Settlement Fund of $270,000 shall be paid out by Plaintiff's Counsel in the following manner and in the following order of priority:

(1) $3,000 to Plaintiff as its statutory damages and in recognition of its services as a class representative. This amount shall be paid to Plaintiff (subject to approval by the Court) by check within 14 days of the Effective Date. This amount shall be in addition to any amount recovered by Plaintiff as a class member.

(2) Such amount as the Court may approve for payment of attorney's fees, costs, and expenses to Plaintiff's Counsel. Oxygen agrees not to oppose a request by Plaintiff's Counsel for attorney's fees and costs, including the costs of notice and administration, not to exceed $81,000. The attorney's fees and costs awarded by the Court shall be paid to Plaintiff's counsel by check within 14 days of the Effective Date.

(3) All amounts remaining in the Settlement Fund after payment of the prior two amounts shall be divided equally among the Class Members who timely submit a claim form up to a maximum of $500. No Class Member will receive more than one *pro rata* share of the Settlement Fund, regardless of the number of faxes received. To the extent the total payments to eligible Settlement Class members exceeds the remaining amount of the Settlement Fund (after deduction of Class Counsel's fees and notice and administrative expenses and Plaintiff's incentive award), each claimant will receive their *pro rata* share of the remaining Settlement Fund. Class Members shall be paid from the Settlement Fund by Plaintiff's counsel by a check that shall be void sixty (60) days after the date of issuance.

(4) All unpaid amounts resulting from uncashed checks issued in accordance with subparagraph (3) above and any other unclaimed funds shall be paid to *cy pres* recipients, designated by the Parties and approved by the Court. Plaintiff designates Prairie State Legal Services and Land of Lincoln Legal Assistance

Foundation as equal beneficiaries of any *cy pres* award. Any payments to *cy pres* recipients shall be made thirty (30) days after the void date on the class members' checks.

c. Class Members shall have ninety-five (95) days from the entry of the Preliminary Approval Order to opt out or object to the proposed settlement.

5. **Payment of Claims.** Payment of valid claims shall be made by Plaintiff's Counsel or their agent from the Settlement Fund by checks payable to each Class Member who submits a valid and timely proof of claim. Plaintiff's Counsel or their agent shall issue the checks and deliver them within thirty-five (35) days after entry of an order granting final approval of the Agreement. The Parties assume no risk of loss or theft of the checks mailed by Plaintiff's Counsel or its agent.

6. **Failure to Cash Checks.** If any Settlement Class Member fails to cash a settlement check within sixty (60) days of mailing, the check shall be void.

7. **Release of Oxygen by Plaintiff and Settlement Class.** Plaintiff and all other Class Members who do not opt out, regardless of whether such Members submit claims or receive payments from the Settlement Fund, will forever release, remise and discharge Oxygen and its respective agents, insurers, including but not limited to Erie Insurance Exchange and Erie Insurance Group, employees, officers, directors, partners, shareholders, affiliates, subsidiaries, divisions, parent companies, predecessors in interest, successors in interest, legal counsel, successors and assigns, and all persons, natural or corporate, in privity with anyone or more of them (the "Released Parties") of and from any and all claims, counterclaims, complaints, third party complaints, actions and causes of actions, including but not limited to all claims for injury

and damages under the common law, or any local, state or Federal Statute, including but not limited to the Telephone Consumer Protection Act 47 U.S.C. § 227, as well as all claims for attorney's fees, costs, expenses and the costs of administrating the subject settlement and any and all other claims and/or obligations of any kind and of any nature, that were raised or that could have been raised in the Litigation on behalf of the Plaintiff and Settlement Class pending the United States District Court, Northern District of Illinois, Western Division, in the case of *Able Home Health Care, L.L.C. vs. Oxygen Qualifying Services, Inc.*, case number *09 CV51028* (the "Released Claims.").

8. **Approval by the Court.**

(a) If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and the parties shall return to their respective positions before the execution of this Agreement without prejudice to any of their rights and neither this Agreement nor the fact of this or any prior Agreement shall be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever. In such circumstances, Plaintiff's Counsel shall immediately refund to Oxygen any and all amounts paid by Oxygen, except the costs of notice and administration already incurred, pursuant to this Agreement.

(b) The Parties agree that this Agreement is still enforceable and valid in the event that it is amended or modified either by agreement of the Parties or as ordered by the Court, provided that any such amendment by the Court does not materially affect Oxygen's rights or obligations.

9. **Notice.**

(a) Plaintiff's Counsel or their agent shall, within thirty-five (35) days of entry of the Preliminary Approval Order, cause actual notice, in the form of Exhibit 1, to be sent to the last-known facsimile telephone number of the Class members, according to Oxygen's records (the "Notice"). Plaintiff's Counsel or its agent shall resend Notice to those numbers where the transmission failed. Plaintiff's Counsel or its agent shall make at least two attempts to transmit the Notice by facsimile.

(b) The Parties agree to request the Court to approve the form of notice attached hereto as Exhibit 1, and to propose the form of Preliminary Approval Order attached hereto as Exhibit 2. The fact that the Court may require non-substantive changes in the Notice or Order does not invalidate this Agreement.

(c) Defendant shall produce the Class List to Plaintiff's Counsel in MS Excel format 5 days after entry of the Preliminary Approval Order.

(d) Plaintiff's Counsel or their agent may attempt to identify, if practicable, those class members who did not receive the Notice by facsimile. Plaintiff's Counsel or their agent may mail notice in the form of Exhibit 1 to those class members who have identifiable addresses and who did not receive the notice by facsimile.

10. **Right of Exclusion**. All Settlement Class Members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class Members pursuant to this Agreement. A request for exclusion must be in writing and state the name, address, and facsimile phone number of the person(s) or entity seeking exclusion. Each request must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Litigation." The request must be mailed to Settlement Class counsel at the address provided in the Class Notice and received by such date as set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not received within the time specified shall be invalid and the person(s) serving such a request shall remain a Class Member and shall be bound as a Class Member by the terms of the Agreement, if approved.

Class Members shall have 95 days from the date of entry of the Preliminary Approval Order to opt out of the Settlement.

11. **Right to Object**. Any Class Member may object to the Agreement and appear in person or through counsel, at his, her or its own expense. The deadline to object shall be 95 days from the date of entry of the Preliminary Approval Order. Any Class Member may object to the settlement by filing with the Court and mailing to Plaintiff's Counsel and Defendant's Counsel written objections by the deadline to object that include: (a) the name, address, and facsimile phone number of the person(s) or entity seeking exclusion; (b) a statement of the objection to the Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection.

12. **Preliminary approval.** As soon as practicable after execution of this Agreement, Plaintiff shall make an application to the Court for an order which:

a. Preliminarily approves this Agreement as fair, reasonable and adequate under the circumstances of this case;

b. Certifies the class defined herein for settlement purposes;

c. Appoints Edelman, Combs, Latturner & Goodwin, LLC as Class counsel and Able Home Health, LLC as Class Representative;

d. Schedules a hearing for final approval of this Agreement;

e. Approves the form of notice to the Class, to be directed to the last-known facsimile telephone number of the Class members as shown on Oxygen's records;

f. Finds that facsimile transmission of the Class Notice under Paragraph 9 is the only notice required and directs that such notice be sent to the Class Members and also finds that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23; and

g. Sets deadlines for submission of claim forms, opt outs, appearances and objections to the Agreement. The time period to submit a claim form, opt out, appear and/or object to the Settlement shall be 95 days from the date of entry of the Preliminary Approval Order.

13. **Final Approval.** The Plaintiff shall petition the Court to hold a final hearing upon and enter a Final Approval Order, on a date fixed by the Court consistent with the requirements of the Class Action Fairness Act. The Final Approval Order shall:

a. find that the notice given to Settlement Class members in this action satisfies the requirements of due process and the requirements of applicable state law and FED. R. CIV. P. 23;

b. find that the Agreement is negotiated in good faith, at arm's length and is fair, reasonable and adequate to the Class, find that each member of the Class (except those who have excluded themselves) shall be bound by this Agreement and conclude that this Settlement Agreement should be and is approved;

c. address Plaintiff's counsel's request for attorney's fees and costs and any incentive award to the Plaintiff;

d. order the Defendant to deliver sums equal to the Settlement Fund to Plaintiff's counsel within 10 days of the Final Approval Hearing;

e. direct the Defendant to file a Notice of Compliance within fourteen (14) days of the Effective Date, attesting that the Settlement Fund has been paid in full to Plaintiff's counsel;

f. identify the *cy pres* recipients; and

g. set a date for the parties to report on the final accounting of the Settlement Fund.

Upon expiration of the deadline for submission of claims, objections and/or exclusion/opt-out election but prior to the Final Approval Hearing, Plaintiff's counsel shall provide to Defendant's counsel a complete MS Excel list of all persons or entities receiving the Notice of Proposed Class Action Settlement via facsimile. Plaintiff's Counsel shall provide to Defendant's Counsel a list of persons/entities who submitted valid claim forms, opt outs and objections to the Settlement in MS Excel format.

14. **Advice of Counsel.** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

15. **Waiver of Construction Against Drafter.** The Parties acknowledge that this Agreement reflects the joint drafting efforts of all Parties and their respective counsel and that any ambiguity that may be found in the Agreement shall not be construed against any party.

16. **Benefit of this Agreement.** This Agreement shall be binding upon and inure to the benefit of the Released Parties as defined in Paragraph 7, the members of the Settlement Class not opting out, and each of their successors, predecessors, affiliates, heirs, executors and assigns.

17. **Entire Agreement.** Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Agreement are merged into and with this Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Agreement may be amended, modified or changed only by a written instrument or instruments executed by duly authorized officers or

other representatives of the Parties expressly amending, modifying or changing this Agreement and may not be amended, modified or changed orally.

18. **Release of Attorney's Lien.** In consideration of this Agreement, Plaintiff's Counsel hereby waives, discharges, and releases the "Released Parties" as defined in Paragraph 7 above of and from any and all claims for attorney's fees, by lien or otherwise, for legal services rendered by Plaintiff's Counsel in connection with this case.

19. **Miscellaneous Provisions.** The Parties and their attorneys agree to cooperate fully with one another in seeking approval of this Agreement, and to use their best efforts to effect the consummation of this Agreement.

20. **Dismissal Order.** At the hearing on Final Accounting of the settlement, Plaintiff shall present an Order dismissing the claims of Plaintiff and the Class Members against Defendant Oxygen with prejudice and without costs.

21. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by telecopier shall be deemed legal and binding for all purposes.

23. **Headings.** The headings in this Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Agreement, nor to control or affect meanings, constructions or the effect of the same.

24. **For Settlement Only.** This Agreement is entered into for purposes of resolving all disputes between Defendant and the Plaintiff Class. The assertions,

statements, and representations made herein are for settlement purposes only and the Parties expressly agree that if this Agreement is not finally approved, this Agreement is null and void and may not be used by either party for any purpose.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their duly authorized representatives on the date first written above.

PLAINTIFF:	**DEFENDANT:**
Able Home Health, LLC	Oxygen Qualifying Services, Inc.
By: [signature]	By: [signature]
Its: MEMBER	Its: PRESIDENT

APPROVED AS TO FORM:

Daniel A. Edelman
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
120 South LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

Lori Vanderlaan

Lori A. Vanderlaan
Allie M. Burnet
BEST VANDERLAAN & HARRINGTON
25 E. Washington Street, Suite 210
Chicago, Illinois 60602
(312) 819-1100
(312) 819-8062 (FAX)

EXHIBIT 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU RECEIVED AN UNSOLICITED ADVERTISING FAX FROM OXYGEN QUALIFYING SERVICES, INC. ("Oxygen") PLEASE READ THIS NOTICE CAREFULLY.
IF YOU WISH TO BE PAID BENEFITS UNDER THIS SETTLEMENT, SUBMIT A CLAIM FORM BY DATE, 2010.

To All Members of the Following Class:

> All persons or entities with facsimile numbers who, on or after December 18, 2006 through and including January 7, 2010, were sent faxes by or on behalf of defendant Oxygen promoting its goods or services for sale and who were not provided an "opt out" notice as described in 47 U.S.C. § 227.

I. WHY IS THIS NOTICE BEING SENT?

This notice is being sent to let people know that they may be eligible to receive up to $500 under a proposed settlement of a class action lawsuit if they submit a claim form by **DATE, 2010**. The lawsuit is pending in federal court in Rockford, Illinois. The hearing to approve the settlement will be held on **DATE, 2010 at TIME a.m.** before Magistrate Judge Mahoney, Courtroom 206 of the U.S. District Court, 211 S. Court Street, Rockford, IL 61101.

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Able Home Health, LLC ("Able") sued Oxygen, alleging that it received an unsolicited facsimile advertisement from Oxygen and that the sending of this fax violated federal law, called the federal Telephone Consumer Protection Act. Able sought to represent a class of persons to whom Oxygen sent unsolicited advertising facsimiles. Oxygen denies these allegations but has agreed to settle to avoid the costs and uncertainties of litigation. Oxygen will vigorously defend the lawsuit if the proposed settlement is not approved.

III. WHAT IS THE PROPOSED SETTLEMENT?

The parties to the lawsuit have agreed to settle after extensive negotiations. Under the proposed settlement, Oxygen has agreed to pay a Settlement Fund in the amount of $270,000. The Settlement Fund will pay an award to the plaintiff ($3,000, in addition to its recovery as a class member) and attorney's fees and costs (in the amount of $81,000 or 30% of the Settlement Fund), including costs of notice and administration. After these amounts are deducted, each Class Member who submits a valid claim by **DATE, 2010** will receive an equal share of the remaining funds, regardless of the number of faxes sent to the Class Member, up to a maximum of $500. Your share of the settlement fund depends on how many Class Members submit claim forms. There are approximately 20,000 Class Members.

IV. HOW DO I GET A PAYMENT?

If you are part of the class described above, complete and submit the claim form to the **Class Administrator, ADDRESS or (FAX) ###-####**. Claim forms must be faxed or postmarked by **DATE, 2010**.

V. WHAT AM I GIVING UP?

If the settlement becomes final, you will be releasing Oxygen of any claims relating in any way to its sending of sending of unsolicited advertising facsimiles. This release is more fully explained in paragraph 7 of the Settlement Agreement. You will need to reference case number 09 C 50128. The Settlement Agreement is available at the Clerk's Office, U.S. District Court for the Northern District of Illinois, 211 S. Court Street, Rockford, IL 61101 during regular business hours

VI. EXCLUDING YOURSELF FROM THE SETTLEMENT

You will be a member of the Settlement Class unless you exclude yourself from the Settlement Class. You need not take any action to remain in the Settlement Class but you need to submit a Claim Form by **DATE, 2010** to be eligible to receive a payment.

If you want to keep the right to sue Oxygen over the legal issues in this case, then you must take steps to get out of the settlement. This is called asking to be excluded from – or sometimes called "opting out" of – the class. To exclude yourself from the settlement, you must send a letter saying that you want to be excluded from Able Home Health, LLC v. Oxygen Qualifying Services, Inc., 09 C 50128, class action settlement. Be sure to include your name, address and the number for the facsimile machine on which you were sent the fax advertisement, and your signature by **DATE, 2010**. Send the letter to **the Class Administrator at the address provided in paragraph VIII respectively.** If you opt out, you will not receive any payment from the Settlement Fund, you cannot object to the Settlement and you will not be bound by anything that happens in this lawsuit.

VII. OBJECTING TO THE SETTLEMENT.

Either on your own or through an attorney you hire, you can tell the Court that you don't agree with the settlement or some part of it. You must explain why you think the Court should not approve the settlement. To object, you must send a letter saying that you object to the settlement in Able Home Health, LLC v. Oxygen Qualifying Services, Inc., 09 C 50128. Be sure to include your name, address and the telephone number for the facsimile machine on which you were sent the fax advertisements, a statement of your objection, an explanation of the reasons you object to the settlement and documentation, if any, to support your objection by **DATE, 2010**. The Court will consider your views if you properly submit an objection on time.

Objecting is simply telling the Court that you don't like something about the Settlement. You can object ONLY if you stay in the class. If you exclude yourself, you have no basis to object because the case no longer affects you. Any objections or appearances must be filed with the Court and reference 09 C 50128 and sent to **the Class Administrator at the address provided in paragraph VIII and Defendant's Counsel at the following address: BEST VANDERLAAN & HARRINGTON,** 25 E. Washington Street, Suite 210, Chicago, IL 60602.

VIII. WHO REPRESENTS THE CLASS?

The Court has appointed the following law firm to represent you and other members of the Settlement Class in this lawsuit:

EDELMAN, COMBS, LATTURNER & GOODWIN, LLC (22748)
120 S. LaSalle Street, 18th Floor
Chicago, IL 60603
(312) 917-4504 (312) 419-0379 (FAX) www.edcombs.com

This firm represents your interests in this lawsuit. You may contact them with any questions that you have about the lawsuit or the Settlement. You do not have to pay the fees of Class Counsel. You may also hire your own attorney at your own cost to appear on your behalf.

IX. CAN I GET MORE INFORMATION?

This notice is intended only as a summary of the lawsuit and proposed settlement. It is not a complete statement of the lawsuit or the proposed settlement. You may inspect the pleadings and other papers (including the proposed Settlement Agreement) that have been filed in 09 C 50128, at the office of the Clerk of the Court, U.S. District Court for the Northern District of Illinois, 211 S. Court Street, Rockford, IL 61101. If you have questions about this notice or the proposed settlement, you may contact Settlement Class Counsel at the address and phone number listed above. **DO NOT CONTACT THE COURT OR DEFENDANT FOR INFORMATION.**

BY ORDER OF THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

.

CLAIM FORM

ABLE HOME HEALTH, LLC v. OXYGEN QUALIFYING SERVICES, INC..

(N.D. Ill. 09-C-50128)

TO RECEIVE A PAYMENT UNDER THIS SETTLEMENT AGREEMENT, THIS CLAIM FORM MUST BE FAXED OR POSTMARKED ON OR BEFORE ________, 2010 TO THE FOLLOWING:

[SETTLEMENT ADMINISTRATOR]
[include fax number for return of claims in addition to address]

Please print or type the following information:

NAME OF PERSON OR ENTITY THAT SUBCRIBED TO THE FAX LINE:

____

CURRENT MAILING ADDRESS OF SUBSCRIBER OF FAX LINE:

ADDRESS: _________________________________

CITY/STATE: _________________________________

ZIP CODE: _________________________________

FAX NUMBER: _________________________________

I submit this Claim Form under penalty of perjury and swear that I received an unsolicited fax sent by or on behalf of Oxygen Qualifying Services, Inc., promoting its goods or services for sale, between December 18, 2006 through and including January 7, 2010. I further swear that I and I alone own the facsimile machine and subscribed to the telephone facsimile number that received an unsolicited advertising facsimile from Oxygen Qualifying Services, Inc.

____
Signature

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

ABLE HOME HEALTH, LLC,	)	
	)	
Plaintiff,	)	
	)	3:09-CV-50128
v.	)	
	)	
OXYGEN QUALIFYING SERVICES, INC.	)	Magistrate Judge Mahoney
and JOHN DOES 1-10,	)	
	)	
Defendants.	)	

ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT

The Motion of Plaintiff Able Home Health, LLC ("Plaintiff") for Preliminary Approval of Class Action Settlement and Notice to the Class with defendant Oxygen Qualifying Services, Inc. ("Oxygen" or "Defendant") came on for hearing on DATE, 2010.

Having considered Plaintiff's moving papers, the signed Settlement Agreement and Release (the "Agreement") attached as Appendix A to Plaintiff's Motion for Preliminary Approval, and all other evidence submitted concerning Plaintiff's motion, and after hearing argument of the parties, due notice having been given and the Court being duly advised in the premises, the Court hereby finds that:

(a) The settlement proposed in the Agreement has been negotiated in good faith at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class (as defined below).

(b) The Class Notice (as described in the Agreement) fully complies with Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of the Lawsuit.

(c) With respect to the Settlement Class, this Court finds that, for settlement purposes only, certification is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3). This Court finds that members of the Settlement Class will receive notice of the settlement through the notice program described below.

(d) This Court finds that the Class Notice described below constitutes the best notice practicable under the circumstances and fully complies with Federal Rule of Civil Procedure 23(c)(2)(B).

IT IS THEREFORE ORDERED THAT:

1. The settlement proposed in the Agreement has been negotiated in good faith at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class in light of the factual, legal, practical and procedural considerations raised by this case.

2. The following class (the "Settlement Class") is preliminarily certified solely for the purpose of Settlement pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

> All persons and entities with facsimile numbers who on or after December 18, 2006 through and including January 7, 2010, were sent faxes by or on behalf of defendant Oxygen promoting its goods or services for sale and who were not provided an "opt out" notice as described in 47 U.S.C. § 227.

3. The Court hereby preliminarily appoints Plaintiff Able Home Health, LLC as representative of the Settlement Class and finds that it meets the requirements of Fed. R. Civ. P. 23.

4. The Court hereby preliminarily appoints the following lawyers as counsel to the Settlement Class and finds that counsel meets the requirements of Fed. R. Civ. P. 23: Daniel A. Edelman and Heather Kolbus of Edelman, Combs, Latturner and Goodwin, LLC, 120 S. LaSalle Street, 18th Floor, Chicago, Illinois 60603.

5. Plaintiff's Counsel or the Class Administrator shall give notice of the settlement, its terms, the right to opt out, appear, and the right to object to the settlement as set forth in the Agreement. The Agreement's plan for class notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23. That plan is approved and adopted.

6. The form of notice that Plaintiff's Counsel or their agent will provide is attached as Exhibit 1 to the Agreement. Within 35 days of the date of this Order, Plaintiff's Counsel or their agent will send the notice substantially in the form of Exhibit 1 to the Agreement by facsimile to each Class Member identified on the Class List. This notice program fully complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit. The Court finds and orders that no other notice is necessary. Plaintiff's Counsel or the Class Administrator shall provide the Notice and/or the Claim Form to those Class Members who call to request it.

7. Defendant shall produce the Class List in MS Excel format to Plaintiff's Counsel by DATE, 2010.

8. To effectuate the Settlement, the Court hereby establishes the following deadlines and dates for the acts and events set forth in the Agreement and directs that parties to incorporate the deadlines and dates in the Notice:

(a) Claim Forms shall be returned by Class Members to Plaintiff's Counsel or their agent by fax or mail postmarked on or before DATE, 2010. Claims not submitted by this date shall be barred.

(b) Objections of Class Members or any appearance of an attorney on behalf of a Class Member shall be filed in this Court and served by fax or mail postmarked to Class Counsel and Defendant's counsel on or before DATE, 2010. Each objection must contain the following information: (a) the objector's name (or business name, if the objector is an entity), address and telephone facsimile number; (b) a statement of the objection to the Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection.

(c) All memoranda filed by any Class Member in connection with objections must be filed in this Court and served on Plaintiff's Counsel and counsel for Defendant by fax or mail postmarked on or before DATE, 2010, or shall be forever barred.

(d) Requests by any Class Member to opt out of the Settlement must be faxed or mailed postmarked to Plaintiff's Counsel or their agent on or before DATE, 2010, or shall be forever barred. A notice of intention to opt out must contain the following information: (a) the Class Member's name, address and the telephone facsimile number; (b) a signed statement that expressly states an intent of the Class Member not to participate in the Agreement and to waive all rights to the benefits of the Agreement.

9. Plaintiff's Counsel or the Class Administrator shall file an affidavit regarding notice by DATE, 2010.

10. Defendant shall file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) no later than DATE, 2010.

11. Plaintiff's Counsel shall file with the Court a list of the individual members of the Settlement Class seeking exclusion by DATE, 2010. Plaintiff's Counsel shall file a memorandum in support of final approval of the Settlement on DATE, 2010.

12. The final hearing to determine whether the settlement is fair, reasonable, and adequate, and whether it should be approved by the Court, will be conducted on __________________, 2010 at _____.

13. Any responses to objections, shall be filed with the Court on or before DATE, 2010. There shall be no replies from objectors.

14. In the event that the settlement does not become final and the Effective Date does not occur in accordance with the terms of the Agreement, then this Order shall be void and shall be deemed vacated.

15. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Settlement Class.

Dated: _________________________ ________________________________
Judge